

**BEFORE THE COURT OF ELECTRICITY OMBUDSMAN,
JHARKHAND**

4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi - 834001

Case No. EOJ/01/2006

Dated- 15th Feb.2007.

JSEB through its Chairman & Others

Vrs.

M/s T & T Metals pvt. Ltd.

Case No. EOJ/03/2006

M/s T & T Metals pvt. Ltd.

Vrs.

JSEB through its Chairman & Others

Present:

Mr. Sarju Prasad

Electricity Ombudsman

Mr. Rajesh Shanker,

Counsel For the JSEB & others

Mr. Ajit Kumar, Advocate

Counsel for the M/s T & T.



JUDGEMENT

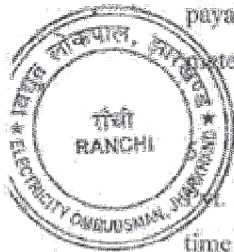
Both these appeals have been filed against the order dated 23/08/2006 passed in case no. 19/2006 by Vidyat Upbhokta Shikayat Niwaran Forum (in short VUSNF), J.S.E.B., Ranchi (Constituted by J.S.E.B in pursuance of Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulations, 2005. Since both these appeals are arising out of the same case and the same order, both the appeals are being disposed of by this common judgement.

2. The brief facts, giving rise to both the appeals are that the J.S.E.B is a licensee for distribution of electricity in the State of Jharkhand and the M/s T&T Metal Pvt. Ltd. is a consumer in the category of HTSS consumer No. AH-5180 with effect from 03/07/2005. The consumer, M/s T&T Metals Pvt. Ltd. filed a complaint case no. 19 of 2006 before the VUSNF, JSEB, Ranchi for quashing the energy bills issued by JSEB in respect to the consumer's electric connection bearing no. AH-5180 under H.T. special service (HTSS) from July/05 to April/06 and onwards so far as it relates to charging of "Maximum Contract Demand" charges instead of actual recorded "Maximum Demand" in the meter, as per the tariff order of Jharkhand State Electricity Regulatory Commission for the year

2003-04 and for quashing the said bills issued by JSEB on the ground that it is arbitrary without application of mind, beyond the provisions of applicable tariff order and against the Jharkhand State Electricity Regulatory Commission's directions and also for commanding to JSEB to adjust/refund (with appropriate bank interest) the excess realized amount from the consumer on account of the demand charge. Further prayer of the consumer was for commanding the JSEB for revision of contract demand of the consumer's industry from 3.6 MVA (3600 KVA) to 3MVA (3000 KVA).

3. It is admitted fact that the consumer M/s T&T Metals Pvt. Ltd. had initially applied for the electric connection of 3.0 MVA (3000 KVA) but the JSEB sanctioned load of 3.6 MVA (3600 KVA). It is also admitted that Jharkhand State Electricity Regulatory Commission (in short JSERC) had notified the tariff order for the year 2003-04 on 27.12.2003, which is applicable till date, as no subsequent tariff order has been issued. It is also admitted that the electric connection to consumer was provided on 03/07/2005 (i.e. after the publication and enforcement of tariff order for the year 2003-04 issued by JSERC which has come into force with effect from 01/01/2004).

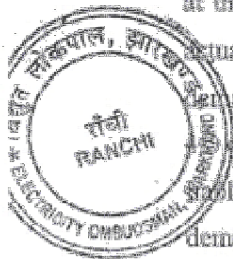
4. From the materials on the record and also from the plea of the JSEB it is evident that there was a tariff order dated 06/04/2000 of BSEB (Bihar State Electricity Board), which was revised with effect from 07/05/2001 issued by the Secretary, BSEB, Patna by which a new tariff schedule of HT consumer having Induction Furnace was introduced by BSEB, Patna. According to which the demand charges at the minimum monthly charge is to be levied at the rate of 120 paise/unit of the contract demand per month, which shall be payable on monthly basis and shall be levied on actual maximum demand recorded in the meter during the month or 100% contract demand, whichever is higher.



The licensee, JSEB has raised energy bills from the consumer M/s T&T Metals Pvt. Ltd. on the basis of present tariff order 2003-04 issued by JSERC and at the same time has charged the 100% of contracted demand in case of less consumption recorded in the meter installed in the premises of the consumer than the contracted demand. The grievance of the consumer is that now after the tariff order of 2003-04 issued by JSERC, the JSEB cannot charge more than the actual recorded demand in the meter on the basis of tariff order of the year 2000 or 2001 that was issued by the BSEB, Patna. The further grievance of the consumer is that actually consumer has applied for 3000 KVA but the licensee, JSEB has arbitrarily forced him to have a load of 3600 KVA.

6. In this regard, the reply of the JSEB is that the load that is to be connected to an induction furnace depends upon the actual measurement and size of the crucible of the consumer. The 3600 KVA load was sanctioned which was not challenged by the consumer at the time of sanction of the load, therefore the complaint of the consumer is baseless.

7. The second plea of the JSEB is that since in the tariff order dated 06/04/2000 & 07/05/2001 of the BSEB, which was applicable to the entire State of Jharkhand also, there is a clear cut order that in case of Induction Furnace who have a contracted demand of 300 KVA and more for melting capacity of more than 500 Kg or below will have to make payment of minimum monthly charges at the rate of, 120 paise/unit of the contract demand and shall be levied on actual maximum demand recorded in the meter during the month or 100% of the contract demand, whichever is higher. Since the JSEB has come into existence after re-organization of the State of Jharkhand and split of the BSEB therefore the tariff order issued as on 06/04/2000 & 07/05/2001 is applicable in case of JSEB also. Therefore the JSEB is entitled for levying 100% of the contracted demand in case there is less consumption recorded in the meter of the consumer. Further the JSEB is justified in raising the bills on the basis of 100% contracted demand. The matter was heard and decided by Vidyut Upbhokta Shikayat Niwaran Forum of JSEB by which it has held that for the first 12 months, the JSEB is not entitled to levy monthly energy charges at the rate of 100% of the contract demand it is entitled to levy energy charges on the actual demand recorded in the meter even if there is less consumption than the contracted demand because in the agreement between the parties there is such a provision in clause of the HT agreement, but after 12 months only the JSEB is entitled to and consumer is liable to pay maximum demand on the basis of 100% of the contract demand or the actual demand recorded in the meter, whichever is higher. This order of the Vidyut Upbhokta Shikayat Niwaran Forum is also based on the judgement of the Jharkhand High Court passed by the Single Bench in case of M/s Incore Metals & Cement Pvt. Ltd. Vrs. Jharkhand & others reported 2006(1) JLR 469. The aforesaid judgement of the Single Bench has since been challenged before the Division Bench and the operation of the order has been stayed by Division Bench in LPA No. 203/2006 vide order dated 20/12/2006. However, the Vidyut Upbhokta Shikayat Niwaran Forum has not recorded any findings whether the consumer was arbitrarily directed to take contract demand load as 3600 KVA instead of his application for 3000 KVA.



8. Being aggrieved by the judgement and order of the VUSNF, JSEB, Ranchi both parties have preferred appeal.

9. After hearing argument of both the parties and on the basis of the materials available on records following questions arise to be decided in these appeals: -

- (a) Whether the action of the JSEB enforcing the consumer M/s T&T Metals Pvt. Ltd. to have maximum demand load of 3600 KVA is arbitrary ?
- (b) Whether the JSEB can levy energy bill as per the tariff order dated 06/04/2000 & 07/05/2001 of BSEB, Patna in view of the new tariff order issued by JSERC for the year 2003-04 ?
- (c) Is the judgement and order of the VUSNF justified on the basis of the new tariff order of JSERC for the year 2003-04?
- (d) Whether the consumer M/s T&T Metals Pvt. Ltd. is entitled to any relief, if so, to which relief?



FINDINGS

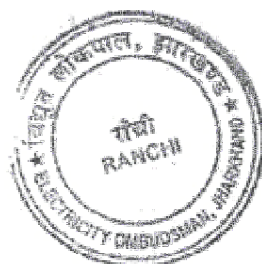
10. Point no. (a)

So far as, the allegation of consumer that initially he has applied for maximum load of 3000 KVA but the JSEB arbitrarily, enhanced the same to 3600 KVA is concerned, we find that there is no material to show that this action of the JSEB is arbitrary. Actually, the load is sanctioned on the basis of actual capacity of the crucible. According to JSEB after measurement of the crucible consumption the load was sanctioned as maximum load of 3600 KVA. It appears that the consumer has made no grievance regarding the enhancement of the load as sanctioned by the JSEB at the initial stage when it ought to be taken. Further I find that the complaint of the consumer regarding enhancement of maximum demand of load to the extent of 3600 KVA is arbitrary has got no basis. Accordingly this point is decided against the consumer.

11. Point (b) & (c)

From this tariff order of the JSERC for the year 2003-04 relating to HT special service (HTSS) with induction furnace mentioned from page no.117 & 118 of the tariff order in Clause 5.25, it is clear that the existing tariff order at the time of making application of the revision of tariff was Rs. 700 as demand charge and energy charge was

Rs. 1.2/KWH/ month and the JSEB had proposed to raise the demand charge from Rs. 700 to 750 and energy charge from Rs. 1.2 to Rs. 1.25 but the Commission after taking into account the entire aspects has approved the following tariff as mentioned in table no. 5.36.



DESCRIPTION	TARIFF
Rs./KVA/month	DEMAND CHARGE
HTSS	300
	ENERGY CHARGE
Rs./KWh/month	
HTSS	2.50
	Minimum monthly charge
HTSS	Rs. 400/kVA/month

12. The JSERC has also given some rebate as mentioned in the table no. 5.37 and 5.38. After having going through the tariff order of 7/5/2001 issued by BSEB we find that in that tariff order electricity charges were only Rs. 1.2/unit and Rs. 700/KVA/month was the demand charge. In the new tariff order we find that the JSERC has given additional benefits to JSEB. The additional benefits are energy charges have been raised from Rs 1.2 to 2.50/unit. However, the demand charge has been reduced from Rs. 700/kVA/month to Rs.300/kVA/month but minimum monthly charge has been added at the rate of Rs. 400/kVA/month. In new tariff order it is not mentioned that the energy charges are to be levied at the rate of 100% of the contract demand or the actual demand recorded in the meter, whichever is higher. This means the JSERC in the tariff order has done away with clause by which BSEB and even the JSEB afterwards were levying energy bills at the rate of actual recorded unit or the 100% of the contract demand, whichever is higher. In the new tariff order 2003-04 there is no whisper that the JSEB is entitled to levy 100% of the contract demand in case if there is less consumption by the consumer than the 100% of the contract demand. After the new tariff order, the provision of old tariff order will be deemed to be repealed unless there is any saving clause. There is no saving clause for the earlier tariff order of BSEB, Patna. The new Electricity Act, 2003 came into force with effect from 10.06.2003. Under the present Electricity Act, 2003, the sole authority is that of the State Electricity Regulatory Commission to determine the tariff and since the new tariff has been determined by JSERC which is the tariff order of 2003-04, the JSEB is entitled to levy bills for energy charges consumed by any consumers in accordance with

the tariff order of the JSERC and all the earlier tariff orders must be deemed to be repealed and on the basis and as such repealed tariff order a licensee like the JSEB is not entitled to apply the provisions of such repealed tariff order.

13. There are few saving clauses in the new tariff order but in those clauses it has nowhere been stated that JSEB is entitled to 100% of the contract demand in case there is less consumption than the contracted demand. Therefore, the JSEB can not charge 100% contract demand it can only charge at the rate of actual demand recorded in the meter and also in the rate prescribed in the tariff order of the JSERC, 2003-04. In the new tariff order JSERC has just doubled the energy charges per unit than the proposed electricity charged by the JSEB in the tariff petition. Therefore, it must be deemed that this had been done to benefit the JSEB. Therefore, JSEB in one way wants to take the benefit of an enhanced electricity charge per unit but do not want to leave the old system of billing at the rate of 100% contract demand which is not at all justified. Further the JSEB wants to take the benefit from the tariff order dated 07/05/2001 but it appears that JSEB was separated from BSEB with effect from 01/04/2001. Therefore any subsequent tariff order issued by the BSEB after the separation of JSEB from BSEB cannot be applied by JSEB, specially, when there is tariff order of issued by a competent Authority i.e. JSERC for the want period.

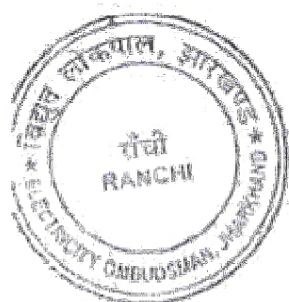


14. The Vidyut Upbhokta Shikayat Niwaran Forum by taking help of the clause 4 (e) of the agreement and judgement of Single Bench of High Court in M/s Incore Metals & Cement Pvt. Ltd. has been pleased to hold that for the first 12 months, the demand charge will be on the basis of actual demand recorded in the meter and after that it shall be 100% of the contracted demand or the maximum demand recorded in each month whichever is higher but the judgement of the Single Bench has been stayed in the LPA no.203 of 2006 by Division Bench by order dated 20/12/2006. The learned lawyer for the JSEB has placed reliance in a judgement of Patna High Court (1993 Vol-I PLJR 257) in which it has been held that if there is the conflict between clause of the agreement and the tariff then this tariff order will prevail. Therefore on applying those principles also we find that the JSEB can only charge at the rate of tariff order of JSERC only.

15. Accordingly, I find that there is merit in the complaint of the consumer and the JSEB has illegally raised bills for the monthly consumption from July 2005 to April 2006 onwards on the basis of 100% contract demand, which should be on the basis of actual

maximum demand recorded in the meter. Therefore of such bills raised by the JSEB must be quashed and JSEB should be directed to issue a fresh bill from the month of July, 2005 onwards at the rate of actual maximum demand recorded in the meter of the consumer and any excess money realized from the consumer must be adjusted in the subsequent bills till such excess sum is reduced to zero failing which JSEB must return the excess amount realized by such bills from the consumer with interest at the rate of 10% per annum till realization of the excess sum is fully paid up. Therefore, I find that the judgement and order of the VUSNP is not fully justified and requires to be modified as mentioned above. The JSEB is entitled to levy the energy charges on the basis of actual Maximum Demand recorded in the meter of the consumer, even if, it less than the contracted Demand until and unless the tariff order is modified by subsequent tariff order of JSERC.


16. In the result appeal case no. EOJ/01/2006 is rejected and appeal case no. EOJ/03/2006 is allowed.



Sd/-

Electricity Ombudsman

True Copy of the Judgement/Order


Office Superintendent
Electricity Ombudsman Jharkhand;
Ranchi - 834001